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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,537	12/20/2000	Theo Postmes	I071 1010	1086

7590 03/12/2002

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/746,537	POSTMES, THEO
Examiner	Art Unit	
Sharmila S. Gollamudi	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 December 2000.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

Claims 1-18 are included in the prosecution of this application.

### ***Priority***

Netherlands 1013943 priority document has not been filed. Priority cannot be acknowledged until applicant provides the document.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 2 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 2 and 12 recites "further comprises at least one of wheat germ and wheat bran." The examiner is unclear whether the composition contains one of the two, wheat bran or wheat germ or both.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kowalsky et al (4348379).**

Kowalsky et al discloses a dietetic composition for digestion regulation. The composition contains honey and wheat bran (Note example).

**Claims 1-2 and 11-12 rejected under 35 U.S.C. 102(b) as being anticipated by WO 89/07399.**

WO 89/07399 discloses a compressed product for improving digestion containing 15% wheat bran, 35% wheat germ, and honey where the mass of the dry products is equivalent to the mass of the honey (Note example 1 and pg. 3).

The above references are considered prior art since the claims are directed towards a composition and its intended use does not hold patentable weight.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3-5 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399.**

As set forth above, WO teaches a composition containing 15% wheat bran, 35% wheat germ, and honey (Note example 1). Further, the range of 10-20% of wheat bran is taught (pg. 3).

WO does not specifically teach the instant range of wheat bran in an example.

However, it is deemed obvious to one of ordinary skill in the art at the time the invention was made to increase the amount of wheat bran in the composition as taught by WO.

**Claims 7-10 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of Kerkvliet (journal of apicultural Research 35 (3/4): 110-117 (1996) further in view of Aoe et al (5112964).**

As set forth above, WO teaches a composition containing 15% wheat bran, 35% wheat germ, and honey (Note example 1). The reference teaches the composition stimulates cerebral activity and improves digestion (Note abstract).

WO does not teach the instant properties of honey or instant additives.

Kerkvliet teaches that honey has antibacterial activity and wound healing properties, which is partly attributed to the presence of enzymes that liberate hydrogen peroxide. In turn the peroxide activity inhibits the growth of bacteria (Note pg. 11).

Aoe et al teach dietary fibers such as hemicellulose (found in wheat bran), pectin substances, and carboxymethylcellulose show physiological effects. These fibers prevent the absorption of toxic substances in the intestine and are removed with the elimination of the fiber. Further, the fibers increase bowel movement. (Note col. 1, lines 1-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect honey to have the instant properties since Kerkvliet teaches the wound healing properties of honey.

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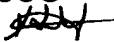
Further, It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the instant additives in WO's composition since Aoe et al teach the instant additives and WO's fibers have physiological advantages for the gastro-intestinal tract. One would be motivated to use another source of fiber such as carboxymethylcellulose (instant additive) to yield an additive effect.

#### **Correspondence**

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG  


February 26, 2002

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
